

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Proposed Rule LSA Document #09-197

DIGEST

Amends 50 IAC 15-3-3 to add requirement for Level Two certification. Amends 50 IAC 15-3-6 to include Level Three in revocation of certification. Adds 50 IAC 15-3-7 to establish the requirements to achieve Level Three. Adds 50 IAC 15-3-8 to establish continuing education requirements for Level Three. Amends 50 IAC 15-4-1 to require professional appraisers to achieve Level Three. Amends 50 IAC 15-5-2 to require tax representatives to achieve Level Three. Amends 50 IAC 15-5-3 concerning certification expiration. Amends 50 IAC 15-5-4 concerning course work for tax representatives. Amends 50 IAC 15-5-8 to include Level Three suspension for certain violations by a tax representative. Effective 30 days after filing with the Publisher.

50 IAC 15-3-3; 50 IAC 15-3-6; 50 IAC 15-3-7; 50 IAC 15-3-8; 50 IAC 15-4-1; 50 IAC 15-5-2; 50 IAC 15-5-3; 50 IAC 15-5-4; 50 IAC 15-5-8

SECTION 1. 50 IAC 15-3-3 IS AMENDED TO READ AS FOLLOWS:

50 IAC 15-3-3 Level Two requirements

Authority: IC 6-1.1-31-1; IC 6-1.1-35.5-8

Affected: IC 6-1.1

Sec. 3. In order to be certified as a Level Two assessor-appraiser, an individual must:

- (1) complete six (6) hours of Level Two pre-examination course work designated by the department;
- (2) pass the Level Two examination designated by the department; ~~and~~
- (3) complete the continuing education requirements specified in section 4 of this rule; **and**
- (4) **attain certification as a Level One assessor-appraiser.**

(Department of Local Government Finance; 50 IAC 15-3-3; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2483; filed Dec 13, 2002, 3:20 p.m.: 26 IR 1517)

SECTION 2. 50 IAC 15-3-6 IS AMENDED TO READ AS FOLLOWS:

50 IAC 15-3-6 Revocation of certification

Authority: IC 6-1.1-31-; **IC 6-1.1-35.5-4.5**

Affected: IC 6-1.1-4; IC 6-1.1-35.5-6

Sec. 6. (a) The department may revoke the Level One, ~~or~~ Level Two, **or Level Three** assessor-appraiser certification of an individual for:

- (1) conduct proscribed by IC 6-1.1-35.5-6(b);
- (2) noncompliance with:
 - (A) the continuing education provisions of this article;
 - (B) the provisions of the contract entered under IC 6-1.1-4; or
 - (C) assessing laws pursuant to IC 6-1.1, and rules of the department.

(b) The revocation procedure shall be initiated by the department's issuance of a notice to the respondent.

The notice shall:

- (1) be sent by certified mail, return receipt requested;
 - (2) contain a clear and concise statement detailing the alleged misconduct;
 - (3) state the time and place for a hearing not less than ninety (90) days from the date of mailing the notice;
 - (4) inform respondent of the information contained in subsections (d) and (g); and
 - (5) inform the respondent that the failure to attend the hearing without good cause may constitute grounds for default entered in favor of the department, as well as the sanction imposed.
- (c) The department shall appoint a hearing officer for purposes of these proceedings. The hearing officer

may by prior written notice:

- (1) conduct any prehearing proceedings requested by either party, or which the hearing officer determines may aid in the ultimate resolution of the proceedings; and
- (2) allow informal discovery subject to any terms and conditions the hearing officer deems to be appropriate.
- (d) The revocation hearing shall be conducted on the record.
- (1) The respondent may be represented by counsel, and shall have the right to present witnesses and evidence on the respondent's own behalf and to cross-examine the department's witnesses or evidence.
- (2) The burden of proof shall be on the department to prove the violation or violations alleged by a preponderance of the evidence.
- (3) No continuance shall be granted except upon a showing of good cause.
- (e) The hearing officer may consider any of the following in recommending to the commissioner whether respondent's Level One, ~~or~~ Level Two, **or Level Three** assessor-appraiser certification should be revoked:
 - (1) The seriousness of the violation that gave rise to these proceedings.
 - (2) Whether the violation is likely to recur.
 - (3) Respondent's character, including remorse, if any,
 - (4) Whether respondent's continued status as a Level One, ~~or~~ Level Two, **or Level Three** assessor-appraiser would pose an undue risk to the public.
 - (5) Any other factor the hearing officer determines to be appropriate under the circumstances.
- (f) The hearing officer shall submit a written recommendation for final action to the commissioner. The recommendation shall contain the reasons for the hearing officer's determination of the sanction, if any, to be imposed. The commissioner is not bound by the hearing officer's recommendation.
- (g) If the commissioner determines that a violation of section 2(a) of this rule has occurred, the commissioner may take any of the following remedies with respect to the respondent:
 - (1) Decline to issue any sanction.
 - (2) Issue a written reprimand admonishing the respondent for the violation.
 - (3) Suspend the respondent's Level One, ~~or~~ Level Two, **or Level Three** assessor-appraiser certification for a period of up to one (1) year, at the conclusion of which the respondent shall be automatically reinstated, provided that respondent meets all educational requirements for a Level One, ~~or~~ Level Two **or Level Three** assessor-appraiser certification, as applicable to the proceedings.
 - (h) The determination of the commissioner constitutes a final appealable order of the department.

(Department of Local Government Finance; 50 IAC 15-3-6; filed Dec 13, 2002, 3:20 p.m.; 26 IR 1518)

SECTION 3. 50 IAC 15-3-7 IS ADDED TO READ AS FOLLOWS:

50 IAC 15-3-7 Level Three requirements

Authority: IC 6-1.1-31-1; IC 6-1.1-35.5-4.5

Affected: IC 6-1.1-4; IC 6-1.1-35.5-6

Sec. 7. In order to be certified as a Level Three assessor-appraiser, an individual must:

- (1) attain certification as a Level Two assessor-appraiser;**
- (2) successfully complete International Association of Assessing Officials Course 101: Fundamentals of Real Property Appraisal;**
- (3) successfully complete International Association of Assessing Officials Course 102: Income Approach to Value;**
- (4) successfully complete International Association of Assessing Officials Course 300: Fundamentals of Mass Appraisal;**
- (5) successfully complete International Association of Assessing Officials Course 400: Assessment Administration;**
- (6) successfully complete Uniform Standards of Professional Appraisal Practice Workshop 151 Uniform Standards of Appraisal Practice; and**
- (7) complete the continuing education requirements specified in section 8 of this rule.**

(Department of Local Government Finance; 50 IAC 15-3-7)

SECTION 4. 50 IAC 15-3-8 IS ADDED TO READ AS FOLLOWS:

50 IAC 15-3-8 Level Three continuing education

Authority: IC 6-1.1-31-1; IC 6-1.1-35.5-4.5

Affected: IC 6-1.1-4; IC 6-1.1-35.5-6

Sec. 8. (a) The continuing education requirements for Level Three certification are forty-five (45) hours of course work approved by the department.

(b) For education cycles beginning on or after January 1, 2010, the continuing education requirements specified in this section must be obtained in twenty-four (24) month cycles, beginning January 1 of the first year following certification.

(Department of Local Government Finance; 50 IAC 15-3-8)

SECTION 5. 50 IAC 15-4-1 IS AMENDED TO READ AS FOLLOWS:

50 IAC 15-4-1 Certification requirements

Authority: IC 6-1.1-31-1; IC 6-1.1-31.7-3

Affected: IC 6-1.1-4-19.5; IC 6-1.1-31.7; IC 6-1.1-35.5

Sec. 1. (a) To be designated as a professional appraiser, an individual must:

(1) be a certified Level Two assessor-appraiser under IC 6-1.1-35.5; but must, by December 31, 2013, be a certified Level Three assessor-appraiser under IC 6-1.1-35.5;

(2) enter a contract that contains all applicable standard contract provisions developed by the department under IC 6-1.1-4-19.5;

(3) specify in the contract entered under IC 6-1.1-4-19.5 that the contract is void if the individual's appraiser certification, issued under IC 6-1.1-31.7, is revoked; and

(4) specify in the contract entered under IC 6-1.1-4-19.5 the precise contractual duties that:

(A) the professional appraiser will personally fulfill;

(B) the professional appraiser will personally review, direct, administer, supervise, or oversee;

(C) will be conducted by an administrative assistant or any person other than the professional appraiser; and

(D) will remain the responsibility of the township or county.

(b) Professional appraisers that are firms must:

(1) employ a certified Level Two assessor-appraiser under IC 6-1.1-35.5; but must, by December 31, 2013 employ a certified Level Three assessor-appraiser under IC 6-1.1-35.5;

(2) enter a contract that contains all applicable standard contract provisions developed by the department under IC 6-1.1-4-19.5, including, specifically, provisions for sanctions;

(3) specify in the contract entered under IC 6-1.1-4-19.5 that the contract is void if the firm's appraiser certification, issued under IC 6-1.1-31.7, is revoked; and

(4) specify in the contract entered under IC 6-1.1-4 the precise contractual duties that:

(A) a certified Level Two assessor-appraiser will personally fulfill; but after December 31, 2013, the precise contractual duties a certified Level Three will personally fulfill;

(B) a certified Level Two assessor-appraiser will personally review, direct, administer, supervise, or oversee; but after December 31, 2013, the precise contractual duties that a certified Level Three assessor-appraiser will personally review

(C) will be conducted by administrative personnel or any person other than a certified Level Two assessor-appraiser; but after December 31, 2013, the precise contractual duties that will be conducted by administrative personnel or any person other than a certified Level Three assessor-appraiser; and

(D) will remain the responsibility of the township or county.

(Department of Local Government Finance; 50 IAC 15-4-1; filed Mar 31, 1999, 10:31 a.m.: 22 IR 2483; filed Dec 13, 2002, 3:20 p.m.: 26 IR 1518)

SECTION 6. 50 IAC 15-5-2 IS AMENDED TO READ AS FOLLOWS:

50 IAC 15-5-2 Practice requirements

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-15-1; IC 6-1.1-15-12; IC 6-1.1-26-1

Sec. 2. (a) In order to practice before the property tax assessment board of appeals or the department, a tax representative must:

- (1) beginning July 1, 2001, be properly certified in writing by the department; and
- (2) have a copy of a properly executed power of attorney from the taxpayer. The power of attorney shall be on the form prescribed by the department and need not be refiled if the form is later revised.

(b) Property tax representatives may not be certified to practice before the property tax assessment board of appeals or the department for:

- (1) matters relating to real and personal property exemptions claimed on a Form 132 or 136;
- (2) claims that assessments or taxes are "illegal as a matter of law", whether brought on a Form 133 pursuant to IC 6-1.1-15-12(a)(6), on a Form 17-T pursuant to IC 6-1.1-26-1(4), a Form 130 pursuant to IC 6-1.1-15-1, or otherwise;
- (3) claims regarding the constitutionality of an assessment; or
- (4) other representation that involves the practice of law.

(c) Individuals who apply for certification or recertification as a tax representative must furnish evidence to the department that they:

- (1) are at least eighteen (18) years of age;
- (2) hold a high school diploma or equivalent credential;
- (3) are a certified Level Two assessor-appraiser; **but after December 31, 2013, they must furnish evidence that they are a certified Level Three assessor-appraiser;**
- (4) have completed the educational course requirements of all rules adopted by the department related to procedures for practice before the property tax assessment board of appeals or the department;
- (5) have fully complied with all rules adopted by the department regarding professional conduct and ethical considerations; and
- (6) have fully complied with all rules adopted by the department regarding client solicitation.

(d) A person who fulfills the requirements of subsection (c) shall be granted a written certification that shall be effective upon issuance by the department. (*Department of Local Government Finance; 50 IAC 15-5-2; filed Dec 5, 2000, 2:32 p.m.: 24 IR 947; filed Dec 13, 2002, 3:20 p.m.: 26 IR 1520*)

SECTION 7. 50 IAC 15-5-3 IS AMENDED TO READ AS FOLLOWS:

50 IAC 15-5-3 Recertification

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1

Sec. 3. Tax representative certifications expire on the same date as the tax representative's certification as a Level Two assessor-appraiser under 50 IAC 15-3-4-; **but after December 31, 2013, tax representative certifications expire on the same date as the tax representative's certification as a Level Three assessor-appraiser under 50 IAC 15-3-7.** (*Department of Local Government Finance; 50 IAC 15-5-3; filed Dec 5, 2000, 2:32 p.m.: 24 IR 948*)

SECTION 8. 50 IAC 15-5-4 IS AMENDED TO READ AS FOLLOWS:

50 IAC 15-5-4 Course work

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1

Sec. 4. (a) Beginning January 1, 2002, a tax representative must, within each forty-eight (48) month continuing education certification cycle under 50 IAC 15-3-4, complete twelve (12) hours of course work that has been designated as tax representative practice course work approved by the department. Of the twelve (12) hours of tax representative practice course work, three (3) hours must relate to professional conduct, ethical considerations, or client communications.

(b) The course work completed under this section will be credited toward the total continuing education course work required to maintain a Level Two assessor-appraiser certification under 50 IAC 15-3-4-, **but after December 31, 2013 the course work completed under this section will be credited toward the total continuing education course work required to maintain a Level Three assessor-appraiser certification under 50 IAC15-3-7.** (*Department of Local Government Finance; 50 IAC 15-5-4; filed Dec 5, 2000, 2:32 p.m.: 24 IR 948; filed Dec 13, 2002, 3:20 p.m.: 26 IR 1520*)

SECTION 9. 50 IAC 15-5-8 IS AMENDED TO READ AS FOLLOWS:

50 IAC 15-5-8 Certification; revocation

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1

Sec. 8. (a) The department may revoke the certification of a tax representative for:

- (1) Violation of any rule applicable to certification or practice before the department, Indiana board, or the property tax assessment board of appeals.
- (2) Gross incompetence in the performance of practicing before the property tax assessment board of appeals, the department, or the Indiana board.
- (3) Dishonesty or fraud committed while practicing before the property tax assessment board of appeals, the department, or the Indiana board.
- (4) Violation of the standards of ethics or rules of solicitation adopted by the department.
- (b) The revocation procedure shall be initiated by the department's issuance of a notice to the respondent.

The notice shall:

- (1) be sent by certified mail, return receipt requested;
- (2) contain a clear and concise statement detailing the alleged misconduct;
- (3) state the time and place for a hearing that is not less than ninety (90) days from the date of mailing the notice;
- (4) inform respondent of the information contained in subsections (d) and (g); and
- (5) inform respondent that the failure to attend the hearing without good cause may constitute grounds for default entered in favor of the state board or the department, as well as the sanction imposed.
- (c) The department shall appoint a hearing officer for purposes of these proceedings. The hearing officer may, with prior written notice to the parties:
 - (1) conduct any prehearing proceedings requested by either party, or which the hearing officer determines may aid in the ultimate resolution of the proceedings; and
 - (2) allow informal discovery subject to any terms and conditions the hearing officer deems to be appropriate.
- (d) The revocation hearing shall be conducted on the record subject to the following:
 - (1) The respondent may be represented by counsel and shall have the right to present witnesses and evidence on the respondent's own behalf and to cross-examine the department's witnesses or evidence.
 - (2) The burden of proof shall be on the department to prove the violation or violations alleged by a preponderance of the evidence.
 - (3) No continuance shall be granted except upon a showing of good cause.
- (e) The hearing officer may consider any of the following in recommending to the commissioner whether respondent's tax representative certification should be revoked:
 - (1) The seriousness of the violation that gave rise to these proceedings.
 - (2) Whether the violation is likely to recur.
 - (3) Respondent's character, including remorse, if any.

- (4) Whether respondent's continued status as a tax representative would pose an undue risk to the public.
- (5) Any other factor the hearing officer determines to be appropriate under the circumstances.
- (f) The hearing officer shall submit a recommendation for final action to the commissioner. The recommendation shall contain the reasons for the hearing officer's determination of the sanction, if any, to be imposed. The commissioner is not bound by the recommendation.
- (g) If the commissioner determines that a violation of subsection 2(a) of this *[section 2(a) of this rule]* has occurred, the commissioner may take any of the following remedies with respect to the respondent:
 - (1) Decline to issue any sanction.
 - (2) Issue a written reprimand, admonishing the respondent for the violation.
 - (3) Suspend ~~of~~ the respondent's Level One, **Level Two, or Level Three** assessor-appraiser certification for a period of up to one (1) year, at the conclusion of which the respondent shall be automatically reinstated, provided that respondent meets all educational requirements for a tax representative certification.
 - (4) Revoke the certification of the respondent for a period of not less than one (1) year, and not more than three (3) years, at the conclusion of which respondent may petition the department for reinstatement provided that respondent meets all of the criteria for certification under this rule.
- (h) The determination of the commissioner constitutes a final appealable order of the department, respectively. (*Department of Local Government Finance; 50 IAC 15-5-8; filed Dec 5, 2000, 2:32 p.m.: 24 IR 949; filed Dec 13, 2002, 3:20 p.m.: 26 IR 1521*)